IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2006

CORAM:

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.412 of 1999

Chinnapullai alias
Bagure Gounder .. Appellant

Vs.

1.Muniappan
S/o Mara Gounder

2.Sippi alias Karian
S/o Mara Gounder

3.Nagaraj
S/o Silupu alias Kariappan

4.Thottiammal
W/o Siluppu alias Kariappan

5.Chinnappapa
W/o Nagaraj

6.Thotiammal
W/o Maddhappan

7.Mariammal
W/o Pappannan

8.Koonasi alias
Chelliammal
Wife of Usalappan .. Respondents

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Criminal Appeal filed under Section 378 of Criminal Procedure Code against the judgment of the Court of the District Munsif-Cum-Judicial Magistrate, Palacode made in C.C. No.79 of 1996 dated 8-3-1999, acquitting the accused for offences under Sections 147, 447, 427 and 379 I.P.C.

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For appellant : Mr.M.V.Krishnan
For respondents : Mr.K.Selvarangan

O R D E R

This appeal has been filed against the judgment of the acquittal of the accused who had been tried for alleged offences under Sections 147, 447, 427 and 379 I.P.C.

2. The brief facts of the case is that the complainant, P.W.1 filed a private complaint against the accused alleging that on 26.02.1996, the accused cut and carried away the sugarcane crops raised by him. On behalf of the complainant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P.10 were marked. On behalf of the accused, D.W.1 and D.W.2 were examined and Ex.D1 and Ex.D2 were marked. When the accused were questioned under Section 379 I.P.C. the accused claimed that they were in possession of the property and that they alone planted the sugarcane crops. On consideration of the oral and documentary evidence, the learned District Munsif Cum Judicial Magistrate, Palacode came to the conclusion that the offences alleged against the accused are not proved and therefore acquitted them. Aggrieved over the said order, this appeal has been filed.

3. Mr.M.V.Krishnan, learned counsel appearing for the petitioner would contend that the complainant obtained an order of injunction on 22.12.1995 which is marked as Ex.P5. While the injunction order was in force, the accused have trespassed into the land of the complainant and carried away the standing crops in the land.

4. Mr.K.Selvarangan, learned counsel appearing for the accused would contend that the order of injunction was exparte order but the actual possession of the land was with the accused and it was the accused who raised the crops as admitted by P.W.1, the complainant and that, in the affidavit filed in I.A. No.825 of 1995 in O.S. No.849 of 1995, the complainant has claimed that he ploughed the land on 19.11.1995 and if that is true, the sugarcane crops could not have grown to the extent of harvesting the same to be sent to the sugar mill within a period of three months, i.e. On 26.02.1996.

5. There were cases between the parties, the complainant on the one side and the first accused on the other with regard to the title of the property. It seems that the complainant purchased the property from one Pachiammal, wife of Late Thimme Gowder, whereas the accused A1 purchased the property from one Chelliammal,

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who is the eighth accused in this case and sister of Thimme Gowder. Both parties have filed suits and counter-claims in the District Munsif Court at Palacode. According to the complainant, on 22.11.1995, the possession was handed over to the complainant in R.E.P. 38 of 1995 as seen from Ex.P4. But even thereafter on 22.12.1995, an order of injunction was also obtained by the complainant against the accused. In Ex.P2, the affidavit filed in I.A. No.825 of 1995 in O.S. No.849 of 1995, the complainant has stated that he ploughed the land on 19.11.1995 and at that time, the accused party came and prevented him from ploughing. If really this averment mentioned in the affidavit is true, the averment that on 26.02.1996, i.e., within three months, the sugarcane was grown sufficient enough to be sent to sugarcane mill is false. According to the complainant, the surgarcanes were seven months old when it was cut on 26.02.1996. If the land was ploughed on 19.11.1995, the sugarcanes could not have been seven months old on 26.02.1996. Therefore on this aspect, the evidence of the complainant and the averments made in the complaint could not be true. Further in his evidence, P.W.1 had categorically admitted that he has not raised the sugarcane crops. P.W.2 during cross examination, has admitted that it was A1 and A2 who have raised sugarcane crops. When A1 was examined by D.W.1, he categorically stated that he raised the crops. Thus in a case where there is a bonafide claim and counter-claim for right or title and possession, the alleged offences under Sections 448 or 447 I.P.C. cannot be brought upon, to the accused.

6. In 1987 MLJ (Criminal) Page 324, it is held as follows:

> "8. Taking the offence under S.448, I.P.C., it is seen that in the complaint P.W.1 has stated that on 16.7.1982, at about 4.30 p.m. P.W.2 took him to the scene house and put him in possession of the said house and that at that time the respondents were occupying the house. It is also stated that, shortly after the appellant was put in possession of the house, P.W.2 the previous owner, removed all his belongings and vacated the premises. The offence under S.448, I.P.C. is an offence not against ownership or title but is an offence against possession and occupation. Considerations like exclusive title to the property, claims, counter-claim, are alien to S.448, I.P.C. In the instant case, it is the evidence of P.W.1 that even P.W.2 was not occupying the scene house at the time of the occurrence. It follows, therefore, that it is the respondents who had been in actual possession of the scene house at the time of the occurrence. No doubt in the complaint, an

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averment is made that the premises owner P.W.2 put P.W.1 in possession of the said house. This could not be actual physical possession since the house was really in the possession of the respondents and P.W.2 had no possession which he could give to P.W.1. Even if the statement that P.W.1 handed over possession to P.W.1 could be taken as true, it could only mean symbolic or constructive possession which can have no significance in an offence under S.448, I.P.C. The appellant has not established that either P.W.2 or P.W.1 was in actual possession of the scene house so as to attract S.448, I.P.C."

In this case, though immediate complaint was said to have been given to the Police by the complainant, the said complaint has not been brought before the Court. Failure to summon the complaint is also fatal to the private complaint filed by the complainant. In a case in which the Trial Court acquitted the accused, normally the High Court does not interfere, unless there are strong valid reasons.

7. In 2002-C-L.W. (Crl.) 513, the Supreme Court held as follows:

"15. That apart, there should have been strong and good reasons for the High Court for converting an order of acquittal into one of conviction. The legal position on that score has been stated by this Court time and again. Suffice it to reproduce what is stated by the court in the decision of this Court in Dhanna Vs. State of M.P. {1996 (10) SCC 79}.

"Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against – acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the innocence of the person accused in

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> criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed.""

In this case also, sufficient reasons have been given as to why the accused are acquitted.

8. In view of the foregoing reasons, I do not find any reason to interfere with the impugned order made by the District Munsif-Cum-Judicial Magistrate, Palacode and hence the Criminal Appeal is dismissed with no order as to costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Munsif Cum Judicial Magistrate,
Palacode.

2. Do Thro The Chief Judicial Magistrate, Dharmapuri.

+ 1 cc to Mr.M. V. Krishnan, Advocate SR No.30170

JRG(CO)
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